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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Conservatorship of the Person
of S.A.

2d Civil No. B291833
(Super. Ct. No. 14PR-0145)
(San Luis Obispo County)

PUBLIC GUARDIAN OF THE
COUNTY OF SAN LUIS
OBISPO, as Conservator, etc.,

Petitioner and Respondent,

v.

S.A.,

Objector and Appellant.

S.A. appeals an order granting the petition of the Public Guardian of the County of San Luis Obispo (Public Guardian) for reappointment as the conservator of her person pursuant to the Lanterman-Petris-Short Act (LPS). (Welf. & Inst. Code, § 5000 et seq.) She contends the trial court erred

when it (1) permitted Public Guardian to call her as a witness, and (2) admitted certain exhibits into evidence as business records. She claims that her counsel provided ineffective assistance when he failed to object to this evidence at trial. We affirm.

FACTUAL AND PROCEDURAL HISTORY

S.A. suffers from schizoaffective disorder. She has not lived independently for more than 20 years. She has had many commitments to the County Psychiatric Health Facility and several LPS conservatorships.

In the summer of 2016, the trial court reappointed Public Guardian for a one-year period as S.A.'s conservator. We affirmed the order. (*Conservatorship of S.A.* (July 19, 2017, B276247) [nonpub. opn.].) In the summer of 2017, Public Guardian filed a petition to be reappointed again. The matter proceeded to a jury trial. The "jury unanimously decided S.A. is gravely disabled," and the trial court renewed her conservatorship for a one-year period. We affirmed in a published opinion. (*Conservatorship of S.A.* (2018) 25 Cal.App.5th 438, 443.)

As that conservatorship period expired, Public Guardian petitioned to be reappointed again. The case proceeded to a bench trial.

Dr. Ilano's Testimony

Daisy Ilano, M.D., is the medical director for the San Luis Obispo Behavioral Health Department and a treating psychiatrist. She has known S.A. for at least seven years. During that time, she observed and evaluated S.A. on numerous occasions. Her personal evaluations as well as her review of S.A.'s records form the basis for her testimony.

Dr. Ilano testified that S.A. suffers from “schizoaffective disorder, bipolar type.” The symptoms range from hallucinations to paranoid and grandiose delusions. She is very paranoid and can be impulsive and unpredictable. She believes she can sell her fingernail clippings for money.

S.A. has been prescribed antipsychotic medications, but when she does not take her medications, she becomes violent, aggressive and unpredictable. She suffers from paranoia and delusions even when she takes her medications.

S.A.’s symptoms make it difficult for her to survive without a conservatorship. Dr. Ilano has observed S.A. being paranoid of her roommate, terrorizing the hospital unit, and being loud and aggressive. Her mental disorder would affect her interactions with apartment managers, roommates and neighbors. She lasted only one week at a less restrictive board and care home before being returned to a locked facility.

S.A. does not have insight into her need for treatment. She denies she has a mental illness and told Dr. Ilano that she does not need medications. If released from her conservatorship she would not be able to care for herself by buying groceries, obtaining housing or managing her money. She lacks a viable plan for her release. S.A.’s plan is that if released from her conservatorship she would return to her home and apply for a job, even though she has not worked in many years. Dr. Ilano is not convinced S.A. owns a home or has the means to support herself.

S.A.’s Testimony

Public Guardian called S.A. to the stand. The trial court asked if her counsel had talked to her about testifying. Her counsel replied that he had and she was prepared to testify.

S.A. denied she had a mental illness or that she needs medication. She said over-the-counter medication was better than the medication she was given.

S.A. said she gambled for a living, and she had enough money to rent an apartment. She said she sends money to her children and grandchildren, and that she had 13 to 15 siblings to support.

S.A. said that if she were released from the locked facility she would take medications if the judge ordered her to. But she added that medications are not going to help her, and that “they are trying to kill me with medication.”

Medical Records

The trial court admitted records into evidence relating to S.A. under the business records exception to the hearsay rule. The records were from three agencies: Public Guardian, the Psynergy Program and the Seventh Avenue Center.

DISCUSSION

Whether S.A. Was Compelled to Testify

S.A. contends the trial court erred when it allowed Public Guardian to call her as a witness because LPS conservatees have a right to refuse to testify on equal protection grounds. Where the facts underlying the claim are undisputed, we review claims of constitutional violations de novo. (*Redevelopment Agency v. County of Los Angeles* (1999) 75 Cal.App.4th 68, 74.)

S.A. argues she was compelled to be a witness against herself. But the record does not support her argument. She did not object to being called. Nor does her testimony suggest she was a reluctant witness. Even while not testifying

she interrupted the proceedings numerous times with comments, despite the trial court's admonitions.

Moreover, her testimony was crucial to her cause. She denied having a mental illness; but confirmed she would comply with medication prescriptions if ordered by the court. She said she had the means to support herself and described her discharge plan. S.A.'s testimony was the only evidence that contradicted Dr. Ilano's testimony. Had the trial court found S.A.'s testimony credible, she would have prevailed. Without it, she would have had no case.

In addition, her claim is forfeited. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Counsel raised no objection but stated "she is prepared" to testify. No mention was made of her claim of a constitutional violation. Had such a claim been raised and sustained below, the trial would have proceeded without any evidence supporting her position.

The Admission of Business Records

S.A. next contends the trial court erroneously admitted her medical records under the business records exception to the hearsay rule.

"The trial court has wide discretion to determine whether there is a sufficient foundation to qualify evidence as a business record; we will overturn its decision to admit such records only upon a clear showing of abuse." (*Conservatorship of S.A.*, *supra*, 25 Cal.App.5th at p. 447; see *People v. Beeler* (1995) 9 Cal.4th 953, 978-979.) The business records exception requires a foundational showing that (1) the writing was made in the regular course of business; (2) at or near the time of the act, condition, or event; (3) the custodian or other qualified witness testifies to its identity and mode of preparation; and (4) the

sources of information and mode and method and time of preparation indicate trustworthiness. (Evid. Code, § 1271; *Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 737-738.) These requirements may be satisfied by affidavit. (Evid. Code, § 1561; *Cooley v. Superior Court* (2006) 140 Cal.App.4th 1039, 1044.)

Here the records were authenticated by affidavit. Evidence Code section 1561 provides in part: “(a) The records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following: [¶] (1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records. [¶] (2) The copy is a true copy of all the records described in the subpoena duces tecum or search warrant, or pursuant to subdivision (e) of [s]ection 1560 [of the Evidence Code], the records were delivered to the attorney, the attorney’s representative, or deposition officer for copying at the custodian’s or witness’ place of business, as the case may be. [¶] (3) The records were prepared by the personnel of the business in the ordinary course of business at or near the time of the act, condition, or event. [¶] (4) The identity of the records. [¶] (5) A description of the mode of preparation of the records.”

S.A.’s counsel objected to the admission of the Psynergy records on the ground that the authenticating declaration did not meet the requirements of Evidence Code section 1271. The space on the form for the name of the custodian of records or other qualified witness was left blank. But the declaration was signed by Iris Quiroy, Corporate Clinic Director. The trial court did not abuse its discretion when it concluded that the clinic director is a qualified witness.

S.A.'s counsel also objected to the other medical records. All the declarations were on a preprinted form. They all contained the following statements: "The sources of information and method and time of preparation are such as to indicate the trustworthiness of the records. [¶] . . . All records referred to in this declaration were prepared by personnel of the above-named organization in the ordinary course of business, at or near the time of the acts, conditions, or events records. [¶] . . . The records were prepared by different members of the above-named patient's treatment team. The individual author(s) of each notation had personal knowledge of the act, condition, or event recorded. Each individual author either directly witnessed the act, condition or event recorded, OR was provided information by someone who directly witnessed the act, condition, or event recorded."

S.A. argues that such statements are nothing more than "conclusory boilerplate," and are insufficient to authenticate the records. But S.A. cites no authority in support of her arguments. (Cf. *Klem v. Access Ins. Co.* (2017) 17 Cal.App.5th 595, 606-607.)

S.A.'s reliance on *People v. Grayson* (1959) 172 Cal.App.2d 372 is misplaced. In *Grayson*, the defendant sought to admit a part of a hotel register under the business records exception. The register was mutilated and a number of pages had been removed. When asked if the record was complete the hotel manager replied, "All I know of, yes." (*Id.* at p. 380.) The trial court excluded the evidence. The Court of Appeal upheld the trial court's ruling stating that the trial court has broad discretion which will not be disturbed on appeal. (*Id.* at p. 381.)

S.A. contends the records contain inadmissible hearsay. But Public Guardian offered to consider redactions if

S.A.'s counsel identified specific hearsay statements. S.A.'s counsel did not point to any proposed redactions. S.A. has forfeited this claim on appeal. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293.)

Ineffective Assistance of Counsel

S.A. contends that to the extent her counsel failed to object to the admission of her testimony and the medical records at trial, she was denied effective assistance of counsel.

A claim of ineffective assistance of counsel requires a showing that the defendant's counsel's conduct fell below prevailing standards of reasonableness, and prejudice resulting from the errors. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.)

"The burden is on the party complaining to establish [error]." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.) S.A. has not done so. As noted above, her counsel might have made a tactical decision to allow her to testify. This is particularly true where, as here, there was otherwise no evidence to dispute Dr. Ilano's testimony. That the testimony went badly is not support for S.A.'s argument that no reasonable counsel would have even attempted to mount a defense.

Finally, even assuming S.A.'s counsel's performance fell below prevailing standards of reasonableness, no prejudice has been shown. Dr. Ilano has personally known and observed S.A. for seven years. Her testimony demonstrated why a continued conservatorship is necessary and was unchallenged by any credible witness. And although S.A. argues generally that the admission of the medical records viewed in total was "highly prejudicial" to her, S.A. does not provide an analysis of the specific prejudicial impact of specific entries in those records in

light of the testimonies of Dr. Ilano and S.A. It is not our function or duty to conduct an independent search of the record to compare the testimony and admissible portions of the medical records to the inadmissible portions in order to conduct a prejudice analysis. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

Rudy G. Kraft, under appointment by the Court of
Appeal, for Objector and Appellant.

Rita L. Neal, County Counsel, Hillary A. Matos,
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